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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THE VIOLET POT, LLC, T/A TVP POTTERY,	:	
	:	
Plaintiff,	:	Civil Action No:
	:	
vs.	:	
	:	
THE LOWE’S COMPANIES, INC. AND LOWE’S HOME CENTERS, INC.,	:	COMPLAINT AND JURY DEMAND
	:	
Defendants.	:	

The Violet Pot, LLC, a New Jersey limited liability company, states by way of complaint as follows:

I. NATURE OF THE ACTION

1. This is an action brought pursuant to The Lanham Trademark Act, 15 U.S.C. §§ 1051-1127 (1998) for trademark infringement, 15 U.S.C. § 1114(a), and unfair competition, 15 U.S.C. § 1125. This complaint also asserts claims under New Jersey’s unfair competition statute, N.J.S.A. 56:4-1 *et seq.*; the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* and under common law for trademark infringement and unfair competition.

2. More particularly, the plaintiff is the holder of a registered mark for “The Violet Pot”, a type of self-watering planter that provides even watering of household plants and

which prevents water damage to furniture surfaces. The plaintiff was a vendor to defendant for a number of years until the defendant terminated that relationship beginning in 2006. Since that time defendant has displayed, marketed and sold look alike products ('knock offs') using interior display signs that identify the knockoffs as "The Violet Pot" manufactured by TVP Pottery™. Alternatively, defendant has displayed, marketed and sold the knockoffs while using labels that said, e.g. "4" denim violet pot", or "4" violet pot" while describing remaining samples of plaintiff's products generically as "self-watering planters". The defendant's practices have caused considerable consumer confusion and damages to plaintiff's reputation, goodwill and brand.

II. PARTIES

3. The plaintiff, The Violet Pot, LLC™, is a New Jersey limited liability company, with principal place of business at 138 W. Centennial Drive, Township of Medford, County of Burlington, New Jersey 08057. It is resident and citizen of the State and District of New Jersey. It also does business under the registered trade name "TVP Pottery".

4. The defendant, The Lowe's Companies, Inc. is a North Carolina corporation with a principal place of business located 1000 Lowe's Boulevard, Mooresville, Iredell County, State of North Carolina 28117. It is a citizen of the Western District of North Carolina. The defendant is a national retailer of home improvement and household goods with approximately 1250 stores located in 49 states, including 32 located in the State and District of New Jersey. These stores are operated by the defendant, Lowe's Home Centers, Inc., a wholly owned subsidiary of Lowe's Company's, Inc., with offices located at 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697. It also is a corporation

organized under the laws of North Carolina. (The defendants may be referred to jointly as “Lowe’s” or in the singular defendant).

III. JURISDICTION AND VENUE

5. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction); 1332 (diversity jurisdiction); 1338 (jurisdiction over trademark and unfair practice actions); and 1367 (supplemental jurisdiction).

6. This matter is properly venued with this court pursuant to 28 U.S.C. § 1391(b) since a substantial part of the events which give rise to this action occurred in this district.

IV. STATEMENT OF COMMON FACTS

7. The plaintiff company was formed in 1996 for the purpose of designing, developing and manufacturing an improved version of self-watering planters (“SWP’s”). A self-watering planter is a type of flower pot or planter that has two components; an outer pot that holds water and a porous inner pot which contains the planting medium (potting soil) and the plant. The outer pot is filled with water which travels through the porous walls of the inner pot, thereby providing even moisture to the plant. The Violet Pot® improved on this concept in two ways. First, it uses a proprietary clay mixture for the liner that provides a more consistent and regulated flow of moisture to the plant. Second, the water containing portion of The Violet Pot is entirely glazed ceramic. This prevents it from leaking, thereby avoiding water damage to furniture tops, shelves and other surfaces. Plaintiff expends a considerable amount of time in developing the color schemes and appearance of the planters, but the general appearance or “look” of SWP’s is fairly common and easily duplicated.

8. The plaintiff company trades under the name TVP Pottery (“TVP”), which became registered as a trademark on December 28, 2004. The company holds a trademark for the name “The Violet Pot”, which was registered on September 16, 2003. It additionally has a trademark for the marketing phrase “The Pot That Waters The Plant”, which was registered on April 30, 2002.

9. The design and quality of the plaintiff’s products attracted the attention of the two largest retailers of home improvement goods and related items. The Home Depot, the nation’s largest home improvement retailer with 2000 stores, began to carry plaintiff’s line of products in January of 1997. In May of 1999, the nation’s second largest home improvement retailer, the defendant Lowe’s Companies, Inc., began to carry The Violet Pot line of products in its retail facilities, Lowe’s Home Improvement Warehouses. As such plaintiff is engaged in interstate commerce, as are the defendants.

10. Defendant Lowe’s assigns “product line merchants” to select, procure and place products in its stores. Most recently, Kyle Todd-Hartzog, was the product line merchant responsible for the placement and management of plaintiff’s products on a national basis. Throughout plaintiff’s business relationship with Lowe’s its product line was reviewed annually and the product line merchant would then make decisions for the upcoming calendar year. Each year TVP Pottery was one of the top performing vendors in the category with both on-time shipping and quantity fill rates. In the calendar year 2005 TVP Pottery® sold over 300,000 SWP’s to Lowe’s.

11. At the end of the review period for 2006 renewal, plaintiff was not contacted by Ms. Todd-Hartzog within the usual time period despite numerous attempts to contact her. Unsure of its status with Lowe’s, plaintiff was compelled to place substantial orders with

its manufacturers in Thailand because it did not want to be subject to penalties for late shipping of products or to jeopardize its exemplary performance record with Lowe's. Many of The Violet Pot® products carried by Lowe's were designed exclusively for Lowe's (at its request) and the cost of creating this unused inventory of these exclusive items has imposed an extreme financial hardship on the plaintiff.

12. In late 2005 Ms. Hartzog told plaintiff's representatives that Lowe's was discontinuing its relationship with plaintiff and that it would obtain SWP's from other sources.

13. As a result of the non-renewal of the vendor agreement, there is no contractual relationship between Lowe's and TVP Pottery®.

14. Plaintiff still provides The Home Depot with its SWP's and The Violet Pot® is sold through our web-site and through other retailers, but the loss of the Lowe's account has been a substantial negative factor for the business.

15. Plaintiff's officers had inspected the SWP's now offered at Lowe's and were aware of performance problems with these products. These poor performance characteristics were explained in great detail to Ms. Hartzog prior to these imitation planters arriving in the Lowe's Stores.

16. As soon as the new products arrived in defendant's stores, the plaintiff began to receive "Return Authorization" calls from Lowe's employees at various stores throughout the nation concerning damaged pots, defective manufacturing and customer returns. These calls concerned the new, cheap "knock-off" products, which we could tell with certainty by the model number that the Lowe's personnel provided with each call. Plaintiff's officers repeatedly asked Ms. Hartzog and her assistant to change the Lowe's

product information system to remove TVP Pottery as the vendor for the cheap knock-offs. To date it has still not been changed and plaintiff continues to receive telephone inquiries from Lowe's employees who believe that TVP Pottery is the supplier of the inferior product.

17. In addition to receiving telephone calls from Lowe's employees who wrongfully confused the cheap knock-offs with The Violet Pot®, plaintiff began to receive email and telephone messages with complaints from customers who purchased the knock offs and found them to be defective or inadequate. The customers, because of the deceptive and illegal marketing schemes of defendant, believed that the defective self-watering planters were manufactured by plaintiff.

18. In response to these complaints, plaintiff's officers went to various Lowe's stores to determine how Lowe's was displaying and marketing the knock off SWP's and found multiple scenarios that created the false impression that the knock off SWP's were manufactured by TVP Pottery.

19. At the request of the defendant, plaintiff provided over 1700 special racks at an average cost of \$140.00 to be used in every Lowe's store to store and display the SWP's plaintiff sold to Lowe's. These racks included point-of-purchase signage designed to promote plaintiff's nationally recognized brand and advertise the benefits of plaintiff's product. The signage prominently displayed plaintiff's trademarks "The Violet Pot" and "The Pot That Waters the Plant" and described how the product works.

20. Plaintiff conducted a survey of defendant's stores in the Mid-Atlantic region near its headquarters and found that fifty percent of the surveyed stores (three¹ out of six) continued to use plaintiff's rack and signage to sell the knock-off products, thereby

¹ The stores are located in Lumberton, New Jersey; Turnersville, New Jersey and Whitemarsh, Maryland.

creating the false and fraudulent impression that the products were The Violet Pot® and were manufactured by plaintiff .

21. Plaintiff has repeatedly asked Ms. Hartzog and her assistant to have our racks and signs removed from Lowe's stores. There has been no response from Lowe's and this practice continues as of the date of this complaint.

22. Attached to this complaint is a copy of rack and signage used at Lowe's store located in Turnersville, Gloucester County, New Jersey. (Exhibit P-13).

23. Plaintiff's investigation uncovered a second manner in which defendant infringes on plaintiff's registered trademarks and falsely attributes the knock offs as plaintiff's products. This is accomplished by the use of shelf tags that are very misleading to consumers. For example; the new knock-off 4" purple SWP carries a shelf tag that says describes the product as "4" Purple Violet Pot" and further carries the same SKU # (stock keeping unit number) that previously was assigned to plaintiff's 4" Purple Violet Pot. Therefore, any consumer who comes to a Lowes store looking for 4" Purple Violet Pot® would read the shelf label stating "4" Purple Violet Pot" and the same SKU # would believe that he/she was purchasing plaintiff's product rather than a cheap, poorly performing imitation.

24. This consumer confusion about the source of Lowe's current inventory of SWP's has been evidenced by numerous emails and consumer complaints direct to plaintiff.

25. By June of 2006 plaintiff realized that this consumer confusion was becoming a growing problem that was not going to be addressed by defendant. Plaintiff then began to retain customer messages to document the problem. The first message that was retained Susan Woodall on June 26, 2006. Ms. Woodall wrote as follows:

I love your flower pots. I bought one over a year ago, and my plant has done beautifully in it! I have just ordered several from your web site.

I don't know if you are associated with LG Sour[c]ing, Inc, but some flower pots just like yours with the TVP Pottery cardboard logo around the top or inside the pot are now in Lowes and Home Depot. I bought several from both places. They all had a sticker on the bottom that said: Distributed by: LG Sour[c]ing Inc, P.O. Box 1535, N. Wilkesboro, NC, 28659, www.lgsourcing.com.

I brought the pots home and put plants in all of them. Several weeks later, I noticed that half of the pots were losing water MUCH faster than others. Then, I found that where I had placed one of the pots on top of a wooden piece of furniture, the wood was soaking wet and buckled. Upon further inspection, I realized that half of the pots were missing all of the ceramic from the bottom of the pot - thereby allowing the water to seep out the bottom of the pot (and onto the surface of whatever you have the pot on).

I took the plants out of all those pots and took them back to Lowes and Home Depot and told them they were defective. The store employees looked at me like I was crazy! I got my money back, but if I hadn't already had one of your pots and knew how they were suppose to be, I would have blamed my warped furniture on you[r] product, never bought another one, and told all my friends what a bad product you have.

I went back and looked, and almost every pot on the shelf at both stores had all the ceramic missing from the bottom. If these are your pots that you are trusting to someone else to package and distribute, they need to do a better job so the ceramic is not broken. I have attached a few pictures I took of the pots before I returned them to Lowes and Home Depot.

Sincerely,
Susan Woodall

26. A copy of Ms. Woodall's email is attached as Exhibit P-1.

27. On July 10, 2005 we received another customer email from Ms. Quita Farley of Fort Worth, Texas. Ms. Farley wrote:

Subject: Violet Pots

I used to be able to purchase this pot locally at Lowes. Recently they have stopped carrying it. They now have a clone brand in the store. Does the inside liner of you[r] pot still have glaze about half way down the side? I find that this extra glaze controls the amount of water a little better? Can you tell me who in Fort Worth Texas still carries your brand of violet pot? If it is not available in my area is there a way to get a discount through you if I order 10 4" pots? I have tried other brands and I really like your product best.

Thank you,
Quita Farley

28. A true copy of Ms. Farley's email is attached as Exhibit P-6.

29. More recently plaintiff received a third email from a customer who wrote:

"By the way, the Lowes on Brice Road in Columbus [Ohio] had other company's pots on a TVP display. Maybe there's nothing you can do about it, but I thought it was kind of crappy and misleading of them."

30. A copy of this email is attached as Exhibit P-10.

31. A third scenario that plaintiff has discovered is where Lowe's displays and stores plaintiff's products (left over inventory) with the knock offs with the same shelf label describing the products with designations such as "4" denim violet pot" with identical pricing. Indeed, the only way in which a customer could determine that the source of the pots was different would be to inspect the bottom of the planters to see if the designation

“The Violet Pot” was present or whether a small label identifying “LG Sourcing, Inc.” (“Lowe’s Global Sourcing”) was present.

32. Plaintiff has been conscientious and thorough in protecting its brand. TVP Pottery has registered six marks with the United States Patent & Trademark Office relating to its products and trade name. See Exhibit P-16 attached. It has also obtained two design patents for specific self-watering planters. Since it began its operations in 1999 the designation “The Violet Pot” has gained secondary meaning as customers have learned to associate plaintiff as the single source for “The Violet Pot.” Lowe’s continued use of TVP Pottery’s signs and display racks, its misleading designation of knock off pots as “4” denim violet pot” and the use of identical SKU #'s, and its mixing of plaintiff’s products with the newer, inferior SWP has created substantial customer confusion as to the source of the inferior pots and has caused damage to TVP Pottery’s brand and business reputation.

33. The defendant’s conduct is willful and intentional in light of plaintiff’s many efforts to inform Lowe’s product line merchant, Ms. Hartzog, and her assistant of customer confusion and requests that Lowe’s stop its misleading sales practices.

COUNT ONE

(TRADEMARK INFRINGEMENT-15 U.S.C.A. § 1114(1))

34. Plaintiff repeats and incorporates the allegations contained in Paragraphs 7 through 33 as if set forth in full herein.

35. The actions of the Defendants, Lowe’s Companies, Inc. and Lowe’s Home Centers, Inc. have infringed upon Plaintiff’s valid and protectable trademarks “The Violet

Pot®” and “The Pot That Waters the Plant®” which have attained substantial secondary meaning.

36. In its courses of actions as described above, defendants have created substantial confusion to customers about the nature and origin of the SWP planters that defendants falsely portray as “The Violet Pot” and as “The Pot That Waters The Plant”.

37. The nature and methods of the defendants’ use to the term “Violet Pot” is not “fair use” as permitted by law but, rather, is an attempt to take advantage of plaintiffs’ substantial brand recognition and reputation.

38. The conduct of defendants, acting through its agents, servants and employees is willful and intentional infringement on plaintiff’s valid and protectable interests.

Wherefore, plaintiff The Violet Pot, LLC demands judgment against defendants, The Lowe’s Companies, Inc. and Lowe’s Home Centers, Inc., jointly and severally pursuant to 15 U.S.C.A. § 1114 for injunctive relief barring and restraining defendants from infringing on plaintiff’s valid and protectable trademarks, for a remedial order requiring defendants to notify customers of its wrongful conduct, for damages at law as provided by 15 U.S.C.A. 1117 including defendants’ profits, damages sustained by plaintiff and costs to this action, and such other relief as may be equitable and just.

COUNT TWO

(FALSE DESIGNATION OF ORIGIN-15 U.S.C.A. §1125)

39. The plaintiff repeats and incorporates the allegations contained in the previous paragraphs as if set forth in length herein.

40. The defendants have and continue to falsely advertise and promote the knock off products as “The Violet Pot®” and “The Pot That Waters The Plant®”, that is products

manufactured by TVP Pottery®. The defendants have and continue to use labels that falsely designate the knock off SWP's as "4" Violet Pots" and continue to sell plaintiff's products in the same manner as the inferior knock off SWP's.

41. The defendants' use of these false designation occurred in interstate commerce.

42. The defendants use of these false designations has and is likely to cause confusion, mistake or deception as to the origin of the defendant's knock off SWP's as customers do and will reasonably believe that the knock off SWP's are plaintiff's products.

43. As a result of defendants' false designations or origin the plaintiff has and is likely to sustain damages.

Wherefore, plaintiff The Violet Pot, LLC demands judgment against defendants, The Lowe's Companies, Inc. and Lowe's Home Centers, Inc., jointly and severally pursuant to 15 U.S.C.A. § 1125 for injunctive relief barring and restraining defendants from infringing on plaintiff's valid and protectable trademarks, barring and restraining defendants from falsely designating the origins of its current product, for a remedial order requiring defendants to notify customers of its wrongful conduct, for damages at law including defendants' profits, damages sustained by plaintiff and costs to this action, and such other relief as may be equitable and just.

COUNT THREE

(FALSE ADVERTISING -15 U.S.C.A. §1125)

44. The plaintiff repeats and incorporates the allegations contained in the previous paragraphs as set forth in full.

45. The defendants by use of the point of sale advertising signage developed and prepared by plaintiff have made false and misleading statements regarding the origin and nature of the knock off SWP's currently sold in its home center warehouses, all of which have been traveled in interstate commerce.

46. These false and misleading statements have deceived, or have the capacity to deceive prospective consumers, about the nature and origin of the defendants SWP's, which is a material matter to prospective consumers.

47. As a result of defendants' wrongful conduct plaintiff has been injured and likely will be injured in the future.

Wherefore, plaintiff The Violet Pot, LLC demands judgment against defendants, The Lowe's Companies, Inc. and Lowe's Home Centers, Inc., jointly and severally pursuant to 15 U.S.C.A. § 1125 for injunctive relief barring and restraining defendants from infringing on plaintiff's valid and protectable trademarks, for an order barring and restraining defendants from falsely advertising the nature and origin of its current products, for a remedial order requiring defendants to notify customers of its wrongful conduct, for damages at law including defendants' profits, damages sustained by plaintiff and costs to this action, and such other relief as may be equitable and just.

COUNT FOUR

(COMMON LAW FALSE DESIGNATION OF ORIGIN)

48. The plaintiff repeats and incorporates the allegations contained in the previous paragraphs as if set forth in full herein.

49. The defendants have and continue to falsely advertise and promote the knock off products as “The Violet Pot®” and “The Pot That Waters The Plant®”, that is, products manufactured by TVP Pottery®.

50. The defendants’ use of these false designation occurred in interstate commerce.

51. The defendants use of these false designations has and is likely to cause confusion, mistake or deception as to the origin of the defendant’s knock off SWP’s as customers do and will reasonably believe that the knock off SWP’s are plaintiff’s products.

52. As a result of defendants’ false designations or origin the plaintiff has and is likely to sustain damages.

Wherefore, plaintiff The Violet Pot, LLC demands judgment against defendants, The Lowe’s Companies, Inc. and Lowe’s Home Centers, Inc., jointly and severally pursuant to the Common Law of the State of New Jersey for injunctive relief barring and restraining defendants from infringing on plaintiff’s valid and protectable trademarks, barring and restraining defendants from falsely designating the origins of its current product, for a remedial order requiring defendants to notify customers of its wrongful conduct, for damages at law including defendants’ profits, damages sustained by plaintiff and costs to this action, for punitive and exemplary damages, and such other relief as may be equitable and just.

COUNT FIVE

(COMMON LAW FALSE ADVERTISING)

53. The plaintiff repeats and incorporates the allegations contained in the previous paragraphs as set forth in full.

54. The defendants by use of the point of sale advertising signage developed and prepared by plaintiff have made false and misleading statements regarding the origin and nature of the knock off SWP's currently sold in its home center warehouses, all of which have been traveled in interstate commerce.

55. These false and misleading statements have deceived, or have the capacity to deceive prospective consumers, about the nature and origin of the defendants SWP's, which is a material matter to prospective consumers.

56. As a result of defendants' wrongful conduct plaintiff has been injured and likely will be injured in the future.

Wherefore, plaintiff The Violet Pot, LLC demands judgment against defendants, The Lowe's Companies, Inc. and Lowe's Home Centers, Inc., jointly and severally pursuant to the common law of New Jersey for injunctive relief barring and restraining defendants from infringing on plaintiff's valid and protectable trademarks, for an order barring and restraining defendants from falsely advertising the nature and origin of its current products, for a remedial order requiring defendants to notify customers of its wrongful conduct, for damages at law including defendants' profits, damages sustained by plaintiff, for the costs to this action, for punitive and exemplary damages and such other relief as may be equitable and just.

COUNT SIX

(NEW JERSEY CONSUMER FRAUD ACT-N.J.S.A. 56:8-1 et seq.)

57. The plaintiff repeats and incorporates the allegations contained in the previous paragraphs as set forth in full.

58. The defendants have used and employed deception, fraud, false pretense, and misrepresentation in the sale of its knock off SWP's in the 32 home center warehouses located in the State and District of New Jersey. The defendants have done so by use of the point of sale advertising signage developed and prepared by plaintiff have made false and misleading statements regarding the origin and nature of the knock off SWP's currently sold in its home center warehouses, all of which have been traveled in interstate commerce.

59. The defendants have used and employed deception, fraud, false pretense, and misrepresentation by the use of labels that falsely designate the knock off SWP's as, e.g. "4" Violet Pots" and by the sale of plaintiff's products in the same manner as the inferior knock off SWP's.

60. As a direct result of defendants use and employment of the above described acts and practices, the plaintiff has suffered ascertainable losses.

Wherefore, plaintiff The Violet Pot, LLC demands judgment against defendants, The Lowe's Companies, Inc. and Lowe's Home Centers, Inc., jointly and severally pursuant to N.J.S.A. 56:8-2 for its ascertainable losses, treble damages, reasonable counsel fees and costs of suit and such other relief as may be equitable and just.

JURY DEMAND

Plaintiff demands a trial by jury as permitted by law.

CERTIFICATION OF COUNSEL

Defendants have filed a complaint for declaratory relief concerning the validity of plaintiff's trademarks in the United States District Court for the Western District of North Carolina, Statesville Division, bearing Docket No. 05-0094. I know certify that there are

no other actions, proceedings or arbitrations pending or contemplated regarding the issues between the parties.

BARRON, BAKER & POSTERNOCK, LLP
Attorneys for Plaintiff, The Violet Pot, LLC
t/a TVP Pottery

By: /s/ Thomas M. Barron (TB7489)
Thomas M. Barron (TB 7489)

Dated: August 28, 2006

THE VIOLET POT, LLC, T/A TVP POTTERY
VS.
THE LOWE'S COMPANIES, INC. AND LOWE'S HOME CENTERS, INC.

CIVIL ACTION No.:

EXHIBIT P-1

-----Original Message-----

From: Susan Woodall [<mailto:SKW1993@bellsouth.net>]
Sent: Tuesday, June 20, 2006 10:12 PM
To: sales@tvppottery.com
Subject: Broken Ceramic

Hello,

I love your flower pots. I bought one over a year ago, and my plant has done beautifully in it! I have just ordered several from your web site.

I don't know if you are associated with LG Sourcing, Inc, but some flower pots just like yours with the TVP Pottery cardboard logo around the top or inside the pot are now in Lowes and Home Depot. I bought several from both places. They all had a sticker on the bottom that said: Distributed by: LG Sourcing Inc, P.O. Box 1535, N.Wilkesboro, NC, 28659, www.lgsourcing.com. I brought the pots home and put plants in all of them. Several weeks later, I noticed that half of the pots were losing water MUCH faster than others. Then, I found that where I had placed one of the pots on top of a wooden piece of furniture, the wood was soaking wet and buckled. Upon further inspection, I realized that half of the pots were missing all of the ceramic from the bottom of the pot - thereby allowing the water to seep out the bottom of the pot (and onto the surface of whatever you have the pot on).

I took the plants out of all those pots and took them back to Lowes and Home Depot and told them they were defective. The store employees looked at me like I was crazy! I got my money back, but if I hadn't already had one of your pots and knew how they were suppose to be, I would have blamed my warped furniture on you product, never bought another one, and told all my friends what a bad product you have.

I went back and looked, and almost every pot on the shelf at both stores had all the ceramic missing from the bottom. If these are your pots that you are trusting to someone else to package and distribute, they need to do a better job so the ceramic is not broken. I have attached a few pictures I took of the pots before I returned them to Lowes and Home Depot.

Sincerely,
Susan Woodall

THE VIOLET POT, LLC, T/A TVP POTTERY

VS.

THE LOWE'S COMPANIES, INC. AND LOWE'S HOME CENTERS, INC.

CIVIL ACTION No.:

EXHIBIT P-6

From: Quita Farley [mailto:pqfarley@charter.net]

Sent: Monday, July 10, 2006 9:33 PM

To: sales@tvppottery.com

Subject: Violet Pots

I used to be able to purchase this pot locally at Lowes. Recently they have stopped carrying it. They now have a clone brand in the store. Does the inside liner of you pot still have glaze about half way down the side? I find that this extra glaze controls the amount of water a little better? Can you tell me who in Fort Worth Texas still carries your brand of violet pot? If it is not available in my area is there a way to get a discount through you if I order 10 4" pots? I have tried other brands and I really like your product best.

Thank you,
Quita Farley

THE VIOLET POT, LLC, T/A TVP POTTERY
VS.
THE LOWE'S COMPANIES, INC. AND LOWE'S HOME CENTERS, INC.

CIVIL ACTION No.:

EXHIBIT P-10

From: Amy Marshall [mailto:mazer2u@wowway.com]
Sent: Thursday, July 20, 2006 5:29 PM
To: Gregory C. Rollins
Subject: Re: TVP in stores

Now that I know they are for sure supposed to be carrying them and I know the SKU, I can at least go to their customer service and ask them to order some in for me. I'm not sure that's how it works, but it can't hurt.

By the way, the Lowes on Brice Road in Columbus had other company's pots on a TVP display. Maybe there's nothing you can do about it, but I thought it was kind of crappy and misleading of them.

Thank you again!

Amy

----- Original Message -----

From: Gregory C. Rollins

To: 'Amy Marshall'

Sent: Thursday, July 20, 2006 4:52 PM

Subject: RE: TVP in stores

Hello Again.

Just for your reference our SKU # at Home Depot is 208-719 if you ever run into a situation at Home Depot where you can't find the pots ask someone in the Garden Center to check that SKU # in their Computer System for you.

Thanks,

Greg

From: Amy Marshall [mailto:mazer2u@wowway.com]

Sent: Wednesday, July 19, 2006 6:35 PM

To: sales@tvppottery.com

Subject: TVP in stores

Hi,

I've been in touch before about miniature sized pots, but now have a question about the standards. I am a BIG believer in The Violet Pots and currently have about 50 in use and am in need of more. I've always been able to find them at Lowes and Home Depot, but they are suddenly gone from the stores closest to me. They are selling other violet pots instead. Having been burned by other pots in the past (my violets drowned), I'd prefer to stick with TVP pots. I know that you sell them on your site now. I appreciate that the prices have to be elevated due to extra costs of shipping and handling. If I only needed a couple of pots, that extra expense wouldn't be a big deal. Unfortunately, I'll ultimately need at least another 20 pots, which makes the extra expense prohibitive. I was wondering if it's just a fluke that the Lowes and Home Depots near me don't have them now or if those stores are no longer going to carry your products. Also, if they aren't going to carry them, is there anywhere else that I could find them? I live in zipcode 43110, but travel often to Pittsburgh (zip 15237) and can buy them there if they aren't available in the Columbus area.

Thanks, in advance, for your help!

Regards,

Amy Marshall
6679 Warriner Way
Canal Winchester, OH 43110

THE VIOLET POT, LLC, T/A TVP POTTERY
VS.
THE LOWE'S COMPANIES, INC. AND LOWE'S HOME CENTERS, INC.

CIVIL ACTION No.:

EXHIBIT P-13

The Violet Pot

Self-Watering Planter

The plant absorbs only the water it needs!

- African Violet
- Grape Ivy
- Philodendron
- Poinsettia
- Asparagus Fern
- Spider Plant

Great for ALL Moisture-Loving Plants!

The Pot that Waters the Plant.



Plant directly
in top insert

Porous
surface
absorbs
water

Keep the bottom
filled with water



THE VIOLET POT, LLC, T/A TVP POTTERY
VS.
THE LOWE'S COMPANIES, INC. AND LOWE'S HOME CENTERS, INC.

CIVIL ACTION No.:

EXHIBIT P-16



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GROW ANIMALS

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Goods and Services	IC 021. US 002 013 023 029 030 033 040 050. G & S: SELF-WATERING FLOWER POTS. FIRST USE: 20050812. FIRST USE IN COMMERCE: 20050812
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	78572862
Filing Date	February 23, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	November 15, 2005
Registration Number	3094411
Registration Date	May 16, 2006
Owner	(REGISTRANT) The Violet Pot, LLC LTD LIAB CO NEW JERSEY 138 W. Centennial Drive Medford NEW JERSEY 08055
Attorney of Record	NORMAN E. LEHRER, ESQUIRE
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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TEA POTTERY

Word Mark	TEA POTTERY
Goods and Services	IC 021. US 002 013 023 029 030 033 040 050. G & S: SELF-WATERING FLOWER POTS. FIRST USE: 20050812. FIRST USE IN COMMERCE: 20050812
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	78572859
Filing Date	February 23, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	November 15, 2005
Registration Number	3094410
Registration Date	May 16, 2006
Owner	(REGISTRANT) The Violet Pot, LLC LTD LIAB CO NEW JERSEY 138 W. Centennial Drive Medford NEW JERSEY 08055
Attorney of Record	NORMAN E. LEHRER, ESQUIRE
Prior Registrations	2914929
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POTTERY" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE



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Typed Drawing

Word Mark THE VIOLET POT
 Goods and Services IC 021. US 002 013 023 029 030 033 040 050. G & S: self-watering flower pot. FIRST USE: 19960900. FIRST USE IN COMMERCE: 19960900
 Mark Drawing Code (1) TYPED DRAWING
 Design Search Code
 Serial Number 76506491
 Filing Date April 14, 2003
 Current Filing Basis 1A
 Original Filing Basis 1A
 Published for Opposition July 27, 2004
 Registration Number 2894469
 Registration Date October 19, 2004
 Owner (REGISTRANT) The Violet Pot, LLC LTD LIAB CO NEW JERSEY 210 Sharrow Vale Road Cherry Hill NEW JERSEY 08034
 Attorney of Record Norman E. Lehrer
 Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POT" APART FROM THE MARK AS SHOWN
 Type of Mark TRADEMARK
 Register PRINCIPAL-2(F)
 Live/Dead Indicator LIVE

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Typed Drawing

Word Mark TVP POTTERY
 Goods and Services IC 021. US 002 013 023 029 030 033 040 050. G & S: self-watering flower pots. FIRST USE: 20031001.
 FIRST USE IN COMMERCE: 20031001
 Mark Drawing Code (1) TYPED DRAWING
 Design Search Code
 Serial Number 76506490
 Filing Date April 14, 2003
 Current Filing Basis 1A
 Original Filing Basis 1B
 Published for Opposition December 16, 2003
 Registration Number 2914929
 Registration Date December 28, 2004
 Owner (REGISTRANT) The Violet Pot, LLC LTD LIAB CO NEW JERSEY 210 Sharrow Vale Road Cherry Hill NEW JERSEY 08034
 Attorney of Record Norman E. Lehrer
 Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POTTERY" APART FROM THE MARK AS SHOWN
 Type of Mark TRADEMARK
 Register PRINCIPAL
 Live/Dead Indicator LIVE

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Typed Drawing

Word Mark THE VIOLET POT
Goods and Services IC 021, US 002 013 023 029 030 033 040 050, G & S: self-watering flower pot. FIRST USE: 19960900.
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 76248057
Filing Date April 30, 2001
Current Filing Basis 1A
Original Filing Basis 1A
Supplemental Register Date May 8, 2003
Registration Number 2765858
Registration Date September 16, 2003
Owner (REGISTRANT) Violet Pot, LLC, The LTD LIAB CO NEW JERSEY 210 Sharrow Vale Road Cherry Hill NEW JERSEY 08034
Attorney of Record Norman E. Lehrer
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POT" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register SUPPLEMENTAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	THE POT THAT WATERS THE PLANT
Goods and Services	IC 021. US 002 013 023 029 030 033 040 050. G & S: self-watering flower pot. FIRST USE: 19980900.
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	75716319
Filing Date	May 27, 1999
Current Filing Basis	1A
Original Filing Basis	1A
Supplemental Register Date	July 23, 2001
Registration Number	2566298
Registration Date	April 30, 2002
Owner	(REGISTRANT) Violet Pot, LLC, The LTD LIAB CO NEW JERSEY 210 Sharrow Vale Road Cherry Hill NEW JERSEY 08034
Attorney of Record	Norman E. Lehrer
Type of Mark	TRADEMARK
Register	SUPPLEMENTAL
Live/Dead Indicator	LIVE

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